

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building, Third Floor  
Des Moines, Iowa 50319

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Jessica Smalley,	)	
Complainant,	)	
	)	DIA No. 12ICRC004
and	)	
	)	
Iowa Civil Rights Commission	)	
	)	
v.	)	
	)	<b>PROPOSED DECISION</b>
Burlington Area Community YMCA	)	
and YWCA,	)	
Respondent.	)	

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This case came on for hearing at the Lucas State Office Building on September 24, 2012. Assistant Attorney General Grant Dugdale represented the Iowa Civil Rights Commission (the commission). The commission called Jessica Smalley and Amanda Smalley as witnesses. The commission's exhibits 2-3 were admitted into evidence.

Attorney Mary Funk represented respondent Burlington Area Community YMCA and YWCA (jointly referred to as respondent or "the Burlington Y" or "the Y"). Respondent called Deb Mulch and Janelle Jennings as witnesses. Respondent's exhibits A-F were admitted.

The parties submitted a stipulation of facts that was admitted. The parties also asked for 28 days to file briefs. Each filed a timely brief.

**FINDINGS OF FACT**

The facts are largely not in dispute. James Smalley was born as a male in March of 1961. Since he was young, James has identified with being a female. As a boy of 7 or 8, he began acting out his feelings by sneaking into his sister's room and putting on her clothes. He kept his feelings private as he grew up. As an adult, he fathered a daughter and started job with the Iowa Department of Human Services (DHS) where he worked for a number of years. (Stipulation; Exhibit 3; J. Smalley testimony).

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In 2006, James made a decision to transition from male to female. He started a protocol that is required before sex reassignment surgery, including counseling and hormones to suppress male physical traits and increase female physical traits. In October of 2008, James came out as a woman and has lived as a woman ever since. She obtained a court order that formally changed her name to Jessica Lynn Smalley. She changed her name on her birth certificate, social security card, driver's license, bank and credit cards, and with her employer. She has yet to undergo a sex reassignment surgery. (Stipulation; Exhibit 3; J. Smalley testimony).

On or about September 23, 2009, Ms. Smalley went to the Burlington Y to check out the fitness facilities and inquire into membership. The Y has a gym, pool, racquetball/handball courts, track, weight room, cybex center/cardio center, exercise room, and a gymnastics area. The Y has separate locker facilities for men and women. There are two levels of locker room facilities. There are standard locker and shower rooms are available to all members. The Y offers "health service centers" for an additional cost. The health service centers consist of a separate locker room with a steam room, sauna, and Jacuzzi. (Exhibit D; Mulch testimony).

The Burlington Y also has a gender-neutral/family changing room. The family changing room has two curtained changing stalls, one curtained shower stall, four lockers, and a hair dryer. Unlike the other locker rooms, it does not have toilets, sinks, or mirrors. One of the purposes of the family changing room is to provide a place for parents and children to change and shower without bringing children of the opposite sex into the standard locker rooms or health service centers.<sup>1</sup> The Burlington Y handbook prohibits parents from bringing children of the opposite sex over the age of five into the standard locker room. (Stipulation; Mulch testimony; Exhibit D).

A Burlington Y staff member gave Ms. Smalley a tour of the facilities, including the woman's health service center. Ms. Smalley returned to the membership desk and stated that she wished to join. She advised Sheila Burgus, a Y staff member, that she was a pre-operative, transgendered individual. Ms. Smalley testified that she wanted to be upfront with the Y and not create any problems. Ms. Burgus responded that she would need to talk with the executive director, Deb Mulch, who was out of the office. Ms. Smalley agreed to meet with Ms. Mulch upon her return. (Stipulation; J. Smalley testimony).

On September 29, 2009, Ms. Smalley met with Ms. Mulch and Gina Crabtree, the associate executive director. They toured the women's locker room to assess concerns whether Ms. Smalley could use the locker room for changing clothes. The locker room has curtained shower stalls. Ms. Smalley agreed that she was comfortable changing

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<sup>1</sup> The Burlington Y has 5,158 members, of whom 1,534 are minors. (Stipulation).

behind the curtains in the shower stalls and would not expose herself to others. All parties to the meeting agreed to that resolution. Ms. Mulch asked Ms. Smalley if she wanted to join. Ms. Smalley did not join at that time. She stated that she would return after looking at the Y's activity schedules. (Stipulation; J. Smalley, Mulch testimony).

Thereafter, Ms. Mulch raised the issue with Steve McAllister and Tim Roberts. Mr. McAllister was the chair of the Burlington Y board. Mr. Roberts is on the board and is a licensed attorney.<sup>2</sup> Mr. Roberts stated his concern that female members might consider Ms. Smalley's presence in the women's locker room to be a hostile environment. Mr. Roberts conducted research and found a court decision, a case from Minnesota, that offered guidance. That case provided some support for his concern. (Stipulation; Mulch testimony; Exhibit F).

Ms. Mulch contacted other YMCA personnel in and outside Iowa to discuss the issue further. She discussed the issue with Leann Harris, who is a consultant for the national YMCA. Ms. Harris provided a "white paper," which the national YMCA uses to understand and address the needs of the transgender community. The document recommended using sex assignment surgery as the dividing line when determining the appropriate locker room: prior to surgery, the person may use a private family locker room or the locker room of the gender assigned at birth, and after surgery, the person may use the locker room of the new gender. Ms. Mulch also talked to two directors who have addressed the same issue. Both offered pre-operative transgendered members a place to change in gender-neutral locker rooms. Ms. Mulch also searched the internet and found articles on the topic. (Mulch testimony; Exhibits C, F).

Ms. Mulch met with Mr. McAllister and Mr. Roberts to discuss her research. They agreed that Ms. Smalley would not be allowed to use the female locker rooms. They agreed to offer the following options: 1) she could use the male locker room, 2) she could use a gender-neutral locker room, or 3) she could change clothes and shower at home. (Mulch testimony; stipulation).

On October 2, 2009, Ms. Mulch called Ms. Smalley. Ms. Mulch repeated that Ms. Smalley was welcome to join the Burlington Y, but would have to use one of the three options stated above to change clothes and shower. Ms. Smalley did not accept Ms. Mulch's offer. Ms. Smalley did not want to change in the men's locker room because she identified herself as female and feared reprisals from males. She did not consider the change-at-home option acceptable because she perspires when working out and wanted the option to shower at the facility. She did not accept the gender-neutral changing room as an option because she views herself as a woman and no other women at the facility are

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<sup>2</sup> Mr. Roberts was never retained as a legal representative and served solely as a member of the board.

required to use the gender-neutral facility. Ms. Smalley declined to join the Burlington Y due to the restrictions offered by Ms. Mulch. (Stipulation; Mulch, J. Smalley testimony).

Ms. Mulch testified that the Burlington Y changed the options offered to Ms. Smalley out of respect for other women members. The concern was two-fold: not only might a female member see Ms. Smalley as a biological male in a state of undress, but Ms. Smalley, as a biological male, could see female members in various states of undress. Janelle Jennings, a female board member, testified to her personal concern that female patrons would feel vulnerable if a biological male was changing clothes in the same locker room as biological females. Ms. Jennings testified that other board members felt the same, including the male members who considered the privacy concerns of their wives, daughters, and other female members. The board eventually adopted a rule requiring pre-operative transgendered persons use their birth gender for purposes of determining their locker room.<sup>3</sup> (Mulch, Jennings testimony).

Ms. Mulch investigated changes to the facility that might provide more accommodations for Ms. Smalley or other transgendered persons. It would cost between \$75,000 to \$100,000 to add sinks and toilets to the gender-neutral/family changing area. It would cost approximately \$250,000 to move the spas to the pool area of the building. The costs are elevated because the proposed renovations would require the Burlington Y to update sprinklers to meet fire code requirements, and may require accessibility updates as well. Any of the proposed changes would require a capital campaign. (Mulch testimony).

Ms. Smalley testified to being upset and depressed by the Burlington Y's decision. She has had prior problems with depression, and her doctor increased her medications after the Y episode. She testified that she found days that she could not get out of bed due to sadness and depression. Her daughter, Amanda Smalley, testified that Jessica's demeanor changed after the Y episode. Amanda testified that Jessica stopped caring for her home and it began to resemble an episode of "Hoarders." She also began eating foods that are off-limits due to her diabetes, such as triple fudge brownies. Amanda characterized Jessica's eating as "suicide by diet." Jessica's doctor also characterized Jessica as "suicidal" for the same reasons. (J. Smalley, A. Smalley testimony).

There are questions as to nexus between the Burlington Y's action and any emotional distress, and the amount of emotion distress if a nexus was proven. Ms. Smalley signed answers to interrogatories limiting her emotional distress was \$2,500.<sup>4</sup> Ms. Smalley testified that the amount should be greater based on the number of times she went to the hospital. However, she did not submit any medical records or present expert testimony

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<sup>3</sup> The board did not formally adopt the rule until February of 2012.

<sup>4</sup> The answer to interrogatory was not admitted into the record, but the information from the answer was introduced through Ms. Smalley's testimony.

linking her mental health treatment to the actions of the Burlington Y. Additionally, Ms. Smalley lost her job with the DHS in July of 2010, and lost her health care coverage with her job. Ms. Smalley admitted that part of her depression resulted from the loss of her job and insurance. Amanda confirmed that Jessica's mood changed with her job and insurance loss. (J. Smalley, A. Smalley testimony).

Ms. Smalley testified that the loss of her insurance impacted her ability to proceed with the gender reassignment surgery. She wants to do the surgery, but the cost is approximately \$30,000. She cannot afford to go through the surgery without insurance. She currently works 20 to 30 hours per week and is not eligible for insurance through her employment. She receives coverage through Iowa Care, a state assistance plan, but Iowa Care does not cover gender reassignment surgery. Ms. Smalley has continued her hormone treatments, which are covered by Iowa Care. (J. Smalley testimony).

### **CONCLUSIONS OF LAW**

**Statutory and case law framework:** The commission has the responsibility to receive, investigate, mediate, and finally determine the merits of complaints alleging unfair or discriminatory practices.<sup>5</sup> Any person claiming to be aggrieved by a discriminatory or unfair practice may file a complaint with the commission.<sup>6</sup> Complaints are reviewed by an investigator and referred to an administrative law judge to determine whether there is probable cause to support the allegations.<sup>7</sup> If probable cause is found and conciliation unsuccessful, the commission may file a statement of charges and set the case for hearing before a different administrative law judge.<sup>8</sup> The hearing shall be conducted in accordance with the procedural protections required by Iowa Code chapter 17A.<sup>9</sup>

In this case, the commission filed a statement of charges alleging that the Burlington Y committed a violation of Iowa Code section 216.7 by refusing to accept Ms. Smalley for membership as a female and permit her to use the female locker room. Section 216.7 prohibits a public accommodation from denying the accommodations, advantages, facilities, services or privileges based on a person's gender identify. The section also prohibits a public accommodation from discriminating against a person based on gender identity in the furnishing of such accommodations, advantages, facilities, services, or privileges.

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<sup>5</sup> Iowa Code section 216.5(2).

<sup>6</sup> Iowa Code section 216.15(1).

<sup>7</sup> Iowa Code section 216.15(3).

<sup>8</sup> Iowa Code section 216.15(6).

<sup>9</sup> Iowa Code section 216.15(8).

Iowa has generally borrowed the same analytical framework as the federal courts when evaluating civil rights cases.<sup>10</sup> Disparate treatment claims may be proved by direct evidence or indirect evidence. Claims based on direct evidence are shown by a “specific link between the alleged discriminatory animus and the challenged decision[.]”<sup>11</sup> In the present case, the commission did not argue that it could prove disparate treatment based on direct evidence.

If there is no direct evidence of discriminatory intent, the court applies the burden-shifting framework set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).<sup>12</sup> The three steps are:

First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination.

Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant to articulate some legitimate nondiscriminatory reason for [the defendant's action].

Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.<sup>13</sup>

The commission retains the ultimate burden of persuasion that the respondent's actions were discriminatory.<sup>14</sup>

The commission can prove a prima facie case of discrimination in a public accommodations context by showing:

- (1) the complainant is a member of a protected class;
- (2) the complainant made herself available to receive and pay for services ordinarily provided by the defendant to all members of the public in the manner in which they are ordinarily provided; and

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<sup>10</sup> *Kiray v. Hy-Vee, Inc.*, 716 N.W.2d 193, 202 (Iowa App. 2006).

<sup>11</sup> *Gallaher v. Magner*, 619 F.3d 823, 831 (8<sup>th</sup> Cir. 2010).

<sup>12</sup> See *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 6-7 (Iowa 2009)

<sup>13</sup> *Kiray*, 716 N.W.2d at 202.

<sup>14</sup> *Id.*

(3) the complainant did not enjoy the privileges and benefits of the contracted for experience under factual circumstances which rationally support an inference of unlawful discrimination in that (a) the person was deprived of services while similarly situated persons outside the protected class were not deprived of those services, and/or (b) the person received services in a markedly hostile manner and in a manner which a reasonable person would find objectively unreasonable.<sup>15</sup>

The commission alleged that the Burlington Y discriminated against Ms. Smalley based on her gender identify by refusing to allow her to use the female locker room. The commission further alleged that Ms. Smalley did not join the Y based on its refusal to allow her to use the locker room of the gender to which she identifies. The Burlington Y did not specifically go through the steps of the *McDonnell Douglas* test in its brief. The Y largely relies on the Minnesota case alluded to above, *Goins v. West Group*.<sup>16</sup> *Goins* is the most analogous case cited by the parties, and is the most apposite case I found during my independent research. Accordingly, I think it helpful to discuss the holding in *Goins* before proceeding through the *McDonnell Douglas* analysis.

**Goins v. West Group:** Goins was a biological male who identified herself as a female, started female hormone treatment, and had legally changed her name to a female. Like Ms. Smalley, Goings had not undergone a gender assignment surgery. Goins started working for West and used the women's employee restrooms. Female employees complained to management that a biological male was using the female restrooms, thus leading to concerns they would claim a hostile work environment. West told Goins it would enforce a rule that employees only use restrooms according to their biological gender. West gave Goins the option of using a single-occupancy restroom on another floor of the building.

Goins objected and proposed that West engage in education and training to allay the concerns of other female workers. West denied that request. Goins refused to comply with the directive and continued to use the female restroom closest to her work station. West threatened disciplinary action if she continued her noncompliance with its directive. Before any discipline was imposed, Goins resigned her employment. The court noted that West had offered, and Goins declined, a promotion and a substantial pay increase prior to her resignation.

Goins filed an action under the Minnesota Civil Rights Act claiming discrimination based on her sexual orientation. The Minnesota Act defines sexual orientation to include "having or being perceived as having a self-image or identity not traditionally associated

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<sup>15</sup> *Kiray*, 716 N.W.2d at 203.

<sup>16</sup> 635 N.W.2d 717 (Minn. 2001).

with one's biological maleness or femaleness." The parties agreed that Goins had consistently presented herself as a woman, which would qualify for coverage under the civil rights act provisions regarding sexual orientation.

The court noted that Goins did not argue that an employer can designate restrooms by gender. Rather, she claimed that West violated the Act by designating restrooms by biological gender as opposed to self-image gender. The Minnesota Supreme Court declined to take that step. The court affirmed the district court's finding that "the traditional and accepted practice in the employment setting is to provide restroom facilities that reflect the cultural preference for restroom designation based on biological gender."<sup>17</sup> The court further reasoned that a ruling in favor of Goins "would likely restrain employer discretion in the gender designation of workplace shower and locker room facilities, a result not likely intended by the legislature."<sup>18</sup> Accordingly, while the *Goins* court did not directly consider locker and shower facilities, the court expressly saw that as greater concern that may arise in the future.

The court also applied the *McDonnell Douglas* test to determine whether West used its restroom policy as a motive to discriminate against Goins based on her gender identify. In applying the three-part prima facie case test, the court found that Goins was a member of a protected class, but could not meet the second element, which the court characterized as showing that she was qualified to use the restroom facility. Goins could not show she was qualified to use the female restrooms under the employer's rule because she was a biological female. The court did not evaluate the third element or the remainder of the *McDonnell Douglas* case.

The *Goins* court's references to "traditional and accepted practices" and "cultural preferences" are important because other cases rely on similar themes. For example, in discussing sexual harassment claims under Title VII, the United States Supreme Court has opined:

In [] harassment cases, [the] inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. A professional football player's working environment is not severely or pervasively abusive, for example, if the coach smacks him on the buttocks as he heads onto the field-even if the same behavior would reasonably be experienced as abusive by the coach's secretary [] back at the office. The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the

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<sup>17</sup> 635 N.W.2d at 723.

<sup>18</sup> *Id.*

physical acts performed. Common sense, and an appropriate sensitivity to social context, will enable courts and juries to distinguish between simple teasing or roughhousing among members of the same sex, and conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive.<sup>19</sup>

This passage from *Oncale* confirms that the courts must remember that there are differences between men and women, and that resolution of complaints involving gender must sometimes consider social context and common sense.

**Prima facie case:** Respondent did not dispute that Ms. Smalley was a member of a protected class. Ms. Smalley has not undergone a sex reassignment surgery, but the statute does not limit the gender identify to those who have had a surgery. Ms. Smalley has received counseling and female hormone treatment for years, she has legally changed her name, and she has lived as a woman since 2008. She meets the first element of the prima facie case.

The second element is whether Ms. Smalley made herself available to receive and pay for services provided by the Burlington Y. Respondent did not directly challenge this element. Ms. Smalley originally presented herself to the Y and took a tour while considering membership. She did not join after the tour because the Y wanted to consult with Ms. Mulch about the locker room issue. After meeting with Ms. Mulch, Ms. Mulch asked Ms. Smalley if she wanted to join. Ms. Smalley responded that she wanted to look at the facility schedules. Ms. Mulch called Ms. Smalley again a few days later to tell her about the change with the locker room assignments, and again asked her if she wanted to join. Ms. Smalley did not join due to the change in the locker room assignment. Although Ms. Smalley did not formally seek membership with the Y, and there is some question whether she would have joined even if the Y had not changed its original accommodation, she took enough steps to prove she presented herself for membership. The second element is met.

The third element is whether the Burlington Y denied Ms. Smalley privileges and benefits of the facility under circumstances, while similarly situated persons outside the protected class were not, and which rationally support an inference of unlawful discrimination. The Burlington Y did not deny Ms. Smalley membership, did not deny her use of any of the recreation or fitness portions of the facility, and did not deny her use of a locker room. The Y told Ms. Smalley she was free to use the male locker room, which was the locker room associated with her biological gender. The male locker room had the same privileges and benefits as the female locker room. In that sense, the Y did

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<sup>19</sup> *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 81-82 (1998) (emphasis added).

not deny any privileges or benefits of the facilities. The Y only denied Ms. Smalley her requested locker room assignment.

The use of locker and shower facilities is a sensitive area because there are privacy concerns that are not confined to sexual identity. The act of showering and changing clothes is usually a personal act.<sup>20</sup> Certainly, many individuals regardless of sexual identity, sexual orientation, or gender, have privacy and self-image concerns about changing clothes and showering with other people. However, the law does not require health clubs, recreational facilities, employers, and schools, to provide single-person shower and changing rooms for practical reasons relating to costs.<sup>21</sup> Rather, it has been traditionally and socially acceptable for facilities to offer two separate changing and shower rooms: one for men and one for women. In this way, facilities have struck a balance between personal privacy between the genders and cost-effectiveness.<sup>22</sup>

Ms. Smalley does not argue that the Burlington Y can designate locker rooms by gender. In fact, her claim presumes that it can. Ms. Smalley claims, in part, that the men's locker room is not acceptable because some men may not be tolerant to her gender identity and may seek out reprisals against her. She accepts the premise that it is appropriate to designate separate rooms between men and woman. Her only dispute is that she should be considered a woman so she can use the woman's locker room rather than the men's locker room.

The Burlington Y's decision to separate locker rooms by biological gender is a reasonable place to draw the line. While Ms. Smalley and the Y originally discussed a compromise which she would dress in a shower stall behind a curtain, that compromise would not be enforceable if she prevailed in this action. If she prevailed, Ms. Smalley, as a biological male with biological male genitals, could change clothes and shower with a biological female with biological female genitals. There is no basis for belief that the Iowa legislature intended that result.

As indicated in the *Goins* decision, the Burlington Y has an even stronger argument than West because the privacy interests are more pronounced. *Goins* involved the use of

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20 See e.g. *Koeppel v. Speirs*, 808 N.W.2d 177, 181 (Iowa 2011) (finding in an invasion of privacy case that a "bathroom is a place where a reasonable person expects to be left alone.").

21 See *State v. Dennison*, 2012 WL 1580610 (Ohio App. 2012) (holding that "the practical necessity that members of the same sex may share locker rooms to change clothes or use common showers at gyms or fitness facilities.")

22 See *Stuart v. Metropolitan Government of Nashville*, 679 F.Supp.2d 851, 859-60 (M.D.Tenn. 2009) (discussing privacy concerns involving male and female locker/shower rooms at a fire station); *Dennison*, 2012 WL 1580610 (finding that the "use of common locker rooms does not remove all expectations of privacy in use of such facilities.");

restroom facilities only. There was no indication that Goins saw or could see any coworker in a state of undress, or that any employee saw or could see her in a state of undress. Neither would be true in the Y locker room. Additionally, *Goins* involved an employment/office setting, and there was no evidence of minors using the restrooms. The Burlington Y has 1,534 members who are minors, which creates the complication that young girls with no real understanding of human sexuality could be exposed to the male anatomy in the woman's locker room. This case involves greater concerns of personal privacy and vulnerability than *Goins*.

There are no grounds to believe that the Burlington Y adopted or maintained its locker room policy for the purpose of discriminating against Ms. Smalley. The Y offered Ms. Smalley membership at each stage of their discussions. The Y made clear at the hearing that it would continue to welcome her membership at any time. They offered the accommodation of using the gender neutral/family changing area. That room was created for the very purpose of resolving privacy concerns between the genders, that is, offering parents with opposite-gender children a place to change without taking boys into the woman's locker room and girls into the men's locker room. This shows that the Y was sensitive to privacy concerns long-before Ms. Smalley asked for a tour of the premises. The Y demonstrated throughout the proceedings that it was willing to work with Ms. Smalley to meet her interests, while also considering the privacy interests of thousands of other members.

The commission raised a number of pertinent points in its brief, but none ultimately carry the day. The commission questioned how Ms. Smalley's case is different than the treatment of gay and lesbian members, who change and shower in the same locker room as others of their sexual preference. However, from the standpoint of body anatomy, there is no difference between a homosexual patron and a heterosexual patron. This does not create the same vulnerability and privacy concerns as a biological male using the female locker room.

The commission also compared Ms. Smalley's claim to that of an African-American woman, who is likewise a member of a protected class. The commission argued that the Y could not separate locker rooms based on race, so there should be no difference in this case simply because it involves a different protected class. The distinction here is that the commission agreed that there are reasonable grounds to separate locker rooms based on gender. The commission did not argue that the Burlington Y must allow women access to men's locker rooms and men access to women's locker rooms, or move toward uni-sex locker room system. According, the race comparison does not fit here.

Finally, the commission points out that the civil rights laws have historically put people in the position of being uncomfortable, so discomfort alone is not a defense to the Y's

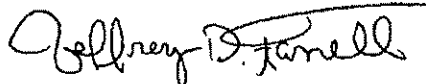
position. The premise for this argument is very true. Many white people were uncomfortable as our nation finally started to make some measurable strides in desegregation in the 1950s and 1960s and the decades that followed. Uneasiness cannot be a defense to enforcement of the civil rights laws. However, this case involves the countervailing, imbedded cultural practice to separate common shower and changing rooms by biological gender. This practice is supported by basic principles of privacy and personal dignity. The Iowa Civil Rights Act cannot be interpreted so broadly to give a biological male, albeit one who identifies herself as a female, the right to change clothes with and shower in a female locker room.

I sympathize with Ms. Smalley. She sincerely presented herself to the Burlington Y with the intent to consider membership as a woman. She has honest and understandable concerns with using the male locker room. Ms. Smalley has suffered through other losses during this same period of time, including a long-time job and the termination of her employment-related health care insurance. Her job loss made it difficult for her to obtain a gender reassignment surgery, which is expensive and not covered by her current limited insurance plan. Notwithstanding my sympathies, the Y did not commit a violation of the civil rights act by refusing to allow her access to the female locker room.

### ORDER

The commission did not prove a violation of Iowa Code section 216.7. The complaint is hereby dismissed.

Issued on December 11, 2012.



Jeffrey D. Farrell  
Administrative Law Judge

cc: AGO – Grant Dugdale  
Respondent Attorney – Mary Funk  
Complainant – Jessica Smalley

**NOTICE**

Any adversely affected party may appeal this decision to the Iowa Civil Rights Commission within 30 days of the date of the decision.<sup>23</sup> Any appeal must be in writing, signed, contain a certificate of service upon the other parties, and identify the following:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

Additionally, the commission itself may initiate its own review of a proposed decision on its own motion at any time within 60 days of the date of the decision.

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<sup>23</sup> 161 IAC 4.23.